

The issues presented on appeal included whether this appeal is timely filed and whether claimant's evidence establishes that her cervical injury arose out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board first finds that this appeal has been filed within the ten (10) days required by K.S.A. 44-551. The Order was first entered in this case on April 4, 1994, following a hearing on March 29, 1994. That Order required respondent to provide treatment through Dr. Andrew Kaufman. Temporary total disability benefits were not an issue. The parties had disagreed about whether Dr. Kaufman should be permitted to treat claimant's cervical complaints as well as upper extremity complaints. As originally written, the Order required respondent to provide treatment with Dr. Kaufman but did not expressly state that treatment of the cervical complaints was to be included. Respondent sought clarification of the Order and a second Order was issued April 18, 1994, indicating that the cervical treatment was intended to be included. The Administrative Law Judge described the second Order as a Nunc Pro Tunc Order. Respondent filed its first Application for Review on April 25, 1994. However, the first Nunc Pro Tunc Order had been misdated and, as a result, it appeared that the Application for Review was out of time. The respondent requested and the Administrative Law Judge entered a second Nunc Pro Tunc which changed the date to April 18, 1994. The Appeals Board considers the first Order described as a Nunc Pro Tunc to be one which, in effect, modifies the original Order. Accordingly, the Application for Review filed within ten (10) days of the first Nunc Pro Tunc is considered timely.

After consideration of the arguments of the parties and review of the record, the Appeals Board concludes that the Administrative Law Judge's Order for medical treatment should be affirmed. The evidence establishes that claimant began experiencing numbness, pain and weakness in her right arm and shoulder in July 1993. She was initially treated for carpal tunnel syndrome and surgical releases were performed by Dr. Storm on both the right and the left wrists in 1993. Claimant returned to work after those surgeries but her symptoms continued to worsen until November 28, 1993, when she woke up with severe pain in her neck. She was thereafter referred to several physicians. She did not initially give a history that related this condition to her work. From her own testimony it appears she was not aware that it was caused by her work activities until she was seen by Dr. Bono. Dr. Bono and Dr. Reintjes both diagnosed herniated disc at C5-6. Dr. Bono attributes the herniation to cumulative trauma. According to claimant, in response to questions by respondent's attorney, Dr. Bono told her it was work related. In the absence of other history to explain the injury, and for purposes of preliminary hearing, the Appeals Board finds that the evidence does indicate it is more probably true than not that the work activities caused, aggravated or accelerated claimant's surgical condition. Accordingly, the Appeals Board finds the decision of the Administrative Law Judge awarding treatment, including treatment for cervical complaints, at the direction of Dr. Andrew Kaufman should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard, dated April 18, 1994, as amended May 20, 1994, should be, and the same is, hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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